United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

JANUARY TERM, 1908.

No. 1851. 531

No. 19, SPECIAL CALENDAR.

MARION L. GARRISON AND WALTER EDWARDS,

Plaintiffs in Error,

vs.

DISTRICT OF COLUMBIA.

IN ERROR TO THE POLICE COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 8, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 10, 1908.

In the Court of Appeals of the District of Columbia.

No. 1851.

MARION L. GARRISON ET AL., Appellants,
vs.
DISTRICT OF COLUMBIA.

a In the Police Court of the District of Columbia, October Term, 1907.

No. 313,720.

DISTRICT OF COLUMBIA
vs.
MARION L. GARRISON, WALTER EDWARDS.

Information for Violation of Plumbing Law.

Be it remembereed, That in the Police Court of the District of Columbia, at the City of Washington, in the said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above entitled cause, to wit:

1 (*Information.*)

In the Police Court of the District of Columbia, October Term, A. D. 1907.

THE DISTRICT OF COLUMBIA, *ss:*

Edward H. Thomas, Esq., Corporation Counsel, by James L. Pugh, Jr., Esq., Assistant Corporation Counsel, who, for the District of Columbia, prosecutes in this behalf in his proper person, comes here into Court and causes the Court to be informed, and complains that Marion L. Garrison and Walter Edwards, late of the District of Columbia aforesaid, on the first day of November, in the year A. D. nineteen hundred and seven, in the District of Columbia aforesaid, and in the City of Washington, on New Jersey Avenue, Southeast, did then and there perform certain plumbing work without first having obtained a license so to do or being in the employ of a licensed master plumber, to wit: made connection of hot water heater with boiler for heating water for domestic purposes in Congress Hall

Hotel; contrary to and in violation of an Act of Congress approved June 18th 1898, and constituting a law of the District of Columbia.

EDWARD H. THOMAS,
Corporation Counsel,
By JAMES L. PUGH, JR.,
Assistant Corporation Counsel.

Personally appeared R. A. O'Brien, this 2nd day of November, A. D. 1907, and made oath before me that the facts set forth in the foregoing information are true, and those stated upon information received he believes to be true.

BERNARD F. LOCRAFT,
Deputy Clerk Police Court of the District of Columbia.

2 In the Police Court of the District of Columbia.

No. 313,720.

DISTRICT OF COLUMBIA
vs.
GARRISON and EDWARDS.

Bill of Exceptions.

Be it remembered that at the hearing of this cause in the Police Court of the District of Columbia on the 20th day of December, 1907, before the Hon. A. R. Mullowney, one of the judges of said court, the prosecution to maintain the issue on its part joined called as a witness:

RICHARD A. O'BRIEN who testified that he is one of the plumbing inspectors of the District: that on the day charged in the information he found the defendants at the Congress Hall Hotel Building connecting together a certain log boiler and a heating tank by means of pipes connecting the same: that the drawing marked "Exhibit A" is a correct representation of the boiler and tank which constitute a hot water heating apparatus for heating and supplying hot water for domestic purposes only: that the log boiler had been attached to the ceiling of the building by means of iron stays or straps but neither was at the time attached or connected to the water pipes, service or sewers of the house: that the connections which the defendants were making were at the points indicated by A and B on the drawing referred to at which points the defendants were connecting the pipes of the boiler with those of the tank and through which pipes all the hot water used in the hotel for bath rooms and other domestic purposes would flow: that since said day the apparatus had been connected to the water pipes in the building but he did
3 not know by whom: thereupon the government, through its attorney, asked the witness whether in his opinion the work so done by the defendants was plumbing work, to which question

the defendants, through their counsel objected on the ground that the question whether the work done was plumbing work was one of law for the court and could not be the subject of expert testimony and further that said question sought to delegate to the witness the province of the court of deciding whether the work was a violation of the statute under the circumstances but the court overruled the objection to which ruling the defendant duly excepted, and thereupon the witness answered that in his experience of 27 years such work had always been regarded as plumbing work. Thereupon one COOK, a witness for the prosecution was produced and testifying that he was a licensed master plumber and had been in the plumbing business for thirty years was, over the same objection and exception, permitted to state that he was familiar with the heater and boiler in question and that connecting them by pipes was plumbing work without regard to the question whether the apparatus was attached to the water service or not; that any piping used for supplying water for domestic purposes was always regarded as plumbing work, and thereupon one HUMPHREYS was called as a witness for the prosecution and testifying that he was a builder of thirty years' experience was over the same objection and exception permitted to testify that such work was always left for plumbers to do in contracts for building. The government then proffered eight master plumbers of experience as witnesses to testify that in their opinion the work done by the defendants was plumbing work whereupon it was conceded for the purpose of the case that they would so testify and the defendants were allowed the benefit of the same objection and exception as that in the case of the other witnesses. Thereupon
4 the defendants produced as a witness

CYRUS B. REES who testified that he was the employer of the defendants who were not licensed plumbers but steam fitters: a drawing of the device was here offered in evidence and received and marked "Exhibit A" and made a part hereof: that the tank and boiler were connected, on the premises of the Congress Hall Hotel Building, only because it was too large to be moved there if it had been connected in his shop: that his men did not connect the apparatus to the water pipes or service as he had simply sold it to the hotel company and connected the tank and boiler as above stated leaving the pipes at C and D on the drawing for the plumbers to connect to the water pipes in the house: that the apparatus when connected together by the said pipes constitutes a heating device for supplying hot water for domestic purposes which it is his business to manufacture and sell and of which he invented certain improvements: that the point marked C on the drawing is the one at which the cold water pipes of the house enter and the point marked D is the one to which the hot water pipes would be attached when in use, but both of these points were left unconnected with the water pipes in the house until they were connected by the plumbers. Each of the defendants thereupon testified that neither of them had connected either of the tanks with the water pipes or service of the building.

This being in substance all of the testimony offered by both the prosecution and the defence and their being no other or further evidence offered the defendants prayed the court to find them not guilty and for the following rulings:

1. The defendants pray the court to rule that there is no evidence that they or either of them connected the tanks or apparatus with the water pipes or service in the building or with any water main.

2. The defendants pray the court to rule that the mere connection of the tank by piping with the boiler while neither is connected with the water pipes or service or with any water main does not constitute a violation of the statute under which the information is framed.

3. The defendants pray the court to rule that the information charges no offence known to the law inasmuch as the statute prohibits engaging in plumbing work without a license whereas the information charges that the defendants did certain plumbing work without first obtaining such license.

But the court refused to rule as prayed in the second and third prayers but granted the first and to such refusal and to all the rulings of the court above mentioned the defendants then and there duly excepted but as the said matters are not of record the defendants pray the court to sign and seal this their bill of exceptions and make the same a part of the record which motion is granted and the court now for then signs and seals the said bill of exceptions this 23d day of December 1907, and orders the same of record.

(Signed) ALEX. R. MULLOWNEY, [SEAL.]
Judge of the Police Court of the District of Columbia.

(Here follows drawing marked p. 6.)

7 (*Copy of Docket Entries.*)

In the Police Court of the District of Columbia, October Term, A. D. 1907.

No. 313,720.

DISTRICT OF COLUMBIA
vs.
MARION L. GARRISON, WALTER EDWARDS.

Information for Violation of Plumbing Law.

Saturday, November 2, 1907.—Continued to Nov. 5, 26, Dec. 13.

Dec. 13.—Defendants arraigned; Plea: Not guilty. Continued to Dec. 20.

Dec. 20.—Judgment: Guilty. Sentence: To pay a fine of ten

No. 1851.
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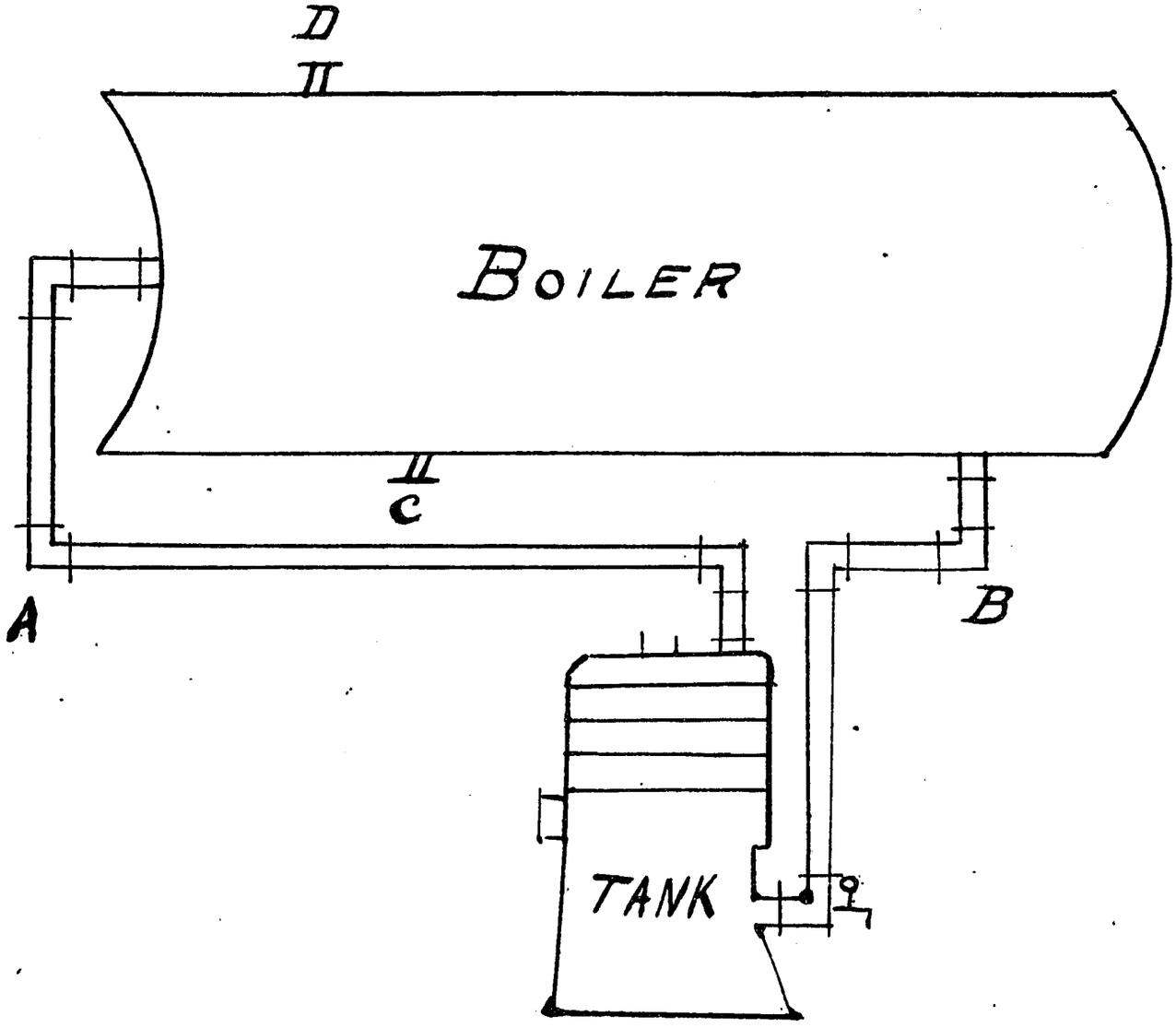
Exhibit A



dollars each, and, in default, to be committed to the Workhouse for the term of thirty days each.

Exceptions taken to the rulings of the Court on matters of law and notice given by the defendant- in open Court at the time of the several rulings of *his* intention to apply to a Justice of the Court of Appeals of the District of Columbia for a writ of error.

Recognizance in the sum of one hundred dollars entered into on writ of error to the Court of Appeals of the District of Columbia upon the condition that in the event of the denial of the application for a writ of error the defendants will, within five days next after the expiration of ten days, appear in the Police Court and abide by and perform its judgment, and that in the event of the granting of such writ of error, the defendants will appear in the Court of Appeals of the District of Columbia and abide by and perform its judgment in the premises. Cyrus B. Rees, surety.

Thereupon proceedings stayed for ten days.

Dec. 23.—Bill of exceptions filed, settled, signed and sealed.

January 4, 1908.—Writ of error received from the Court of Appeals of the District of Columbia.

8 In the Police Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, Joseph Y. Potts, Clerk of the Police Court of the District of Columbia, do hereby certify *that* the foregoing pages, numbered from 1 to 7 inclusive, to be true copies of originals in cause No. 313,720 wherein the District of Columbia is plaintiff and Marion L. Garrison and Walter Edwards, defendants, as the same remain upon the files and records of said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, — the City of Washington, in said District, this 8th day January, A. D. 1908.

[Seal Police Court of District of Columbia.]

JOSEPH Y. POTTS,
Clerk Police Court, Dist. of Columbia.

9 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable Alexander R. Mullowney, Judge of the Police Court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Police Court, before you, between District of Columbia, plaintiff and Marion L. Garrison and Walter Edwards, defendants a manifest error hath happened, to the great damage of the said defendants as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that

then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Court of Appeals of the District of Columbia, together with this writ, so that you have the same in the said Court of Appeals, at Washington, within 15 days from the date hereof. that the record and proceedings aforesaid being inspected, the said Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Seth Shepard, Chief Justice of the said Court of Appeals, the 4th day of January, in the year of our Lord one thousand nine hundred and eight.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Allowed by

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Endorsed on cover: District of Columbia police court. No. 1851. Marion L. Garrison *et al.*, appellants, *vs.* District of Columbia. Court of Appeals, District of Columbia. Filed Jan. 8, 1908. Henry W. Hodges, clerk.

IN THE

Court of Appeals of the District of Columbia.

Special Calendar. No. 1851.

MARION L. GARRISON and
WALTER EDWARDS, Plaintiffs in Error,

vs.

DISTRICT OF COLUMBIA, Plaintiffs in Error.

BRIEF FOR PLAINTIFFS IN ERROR.

Statement of the Case.

The plaintiffs in error were tried in the Police Court upon an information charging that they, in the District of Columbia, on the 1st day of November, 1907,

> "Did then and there perform certain plumbing work without first having obtained a license so to do or being in the employ of a licensed master plumber, to-wit, made connection of hot water heater with boiler for heating water for domestic purposes, in Congress Hall Hotel, contrary to and in violation of an act of Congress approved June 18th, 1898. * * * (R. 1.)"

The undisputed facts are that the defendants were not master plumbers or in the employ of a licensed

master plumber: that they were steam fitters in the employ of Cyrus B. Rees (R. 3) whose business it was to manufacture and sell an apparatus for heating and supplying water for domestic purposes: that the apparatus consisted of a boiler and tank (see drawing R. 4): that Rees had sold the apparatus to the hotel company, but as the two tanks, when joined together, would be too heavy to move they were not connected in his shop, but the defendants, at the hotel, connected the boiler with the tank by attaching the pipes of the two tanks at the points marked "A" and "B": that at that time neither of the tanks was connected with the water pipes or service in the house, nor with any water main, that connection being left for the plumbers to do (R. 3).

The points indicated by C and D on the drawing attached to the water pipes when the appartus is installed.

The court specially found (R. 4) that neither of the defendants connected the apparatus with the water pipes in the building.

Over the objection and exception of the defendants the court permitted certain master plumbers, called as witnesses, to be asked whether, and to testify that, in their opinion the work so done by the defendants was plumbing work, the objection being that the question whether the work done was plumbing work under the circumstances was one of law for the court and could not be the subject of expert or opinion evidence, and further that the question delegated to the witnesses the proper function of the court (R. 3).

The defendants at the close of all the evidence

specially prayed the court to rule that the connection made by the defendants was not a violation of the statute and that the information charged no offense, both of which prayers were denied over objection and exception and judgment pronounced.

Assignment of Errors.

1. The court erred in ruling in effect that it was sufficient to charge in the information under the statute that the defendants did "perform certain plumbing work."

2. In ruling in effect that the mere connection of the boiler and tank while neither was connected with the water pipes or service, nor with any water main was engaging in the work of plumbing under the circumstances.

3. In receiving the opinions of the witnesses that the acts of the defendants were plumbing work.

Argument.

I.

All the assignments of error hinge upon the construction of section 5 of the Act of June 18th, 1898, (30 Stat. at L. 477) "to regulate plumbing and gas fitting in the District of Columbia," under which the information was framed. This section is as follows:

> "Sec. 5. That it shall be unlawful for any person *to engage in the work of plumbing* or gas fitting in the District of Columbia unless he is licensed *as provided in this Act,* or is an employee of a licensed master plumber."

If the contention of the plaintiffs in error prevail it was necessary both to charge and to prove that the defendants *engaged in the business of plumbing* and not enough to allege or prove a single or occasional act, as an incident of their business, which plumbers are accustomed to do, particularly where such acts are not shown to be exclusively the work of plumbers.

It is well settled in this jurisdiction that:

> "When a thing is not within the meaning or purpose of a statute, although, perhaps, within the letter, it will not be construed as included in the enactment."
>
> 16 App. D. C., 301, Mackall *vs.* D. C. and authorities cited.

So in the case just referred to this court held that the sale of a malt extract, although containing an intoxicant, was not a violation of the Act of 1893, prohibiting the sale of liquor without a license.

> A book seller dealing in such stock as is usually kept in a bookstore is not a dealer in second-hand goods within the meaning of an ordinance requiring second-hand dealers to be licensed where such dealer, as an incident to and in connection with his other business, purchases second-hand books.
>
> 79 Illinois 178, Eastman *vs.* Chicago.

It is therefore material to inquire whether the acts of the defendants in this case are within the spirit as well as the letter of the law.

This court has said of the very act under consideration:

> "Thus we see that in the Act of 1898, Congress perfected existing legislation relating to the granting of licenses to plumbers and the *practice of plumbing* in the District * * *. The original Act empowered the Commissioners to issue licenses, and in terms prescribed the punishment to be meted out to plumbers and house owners and others *who neglected or persisted in doing work contrary to the plumbing regulations.* No express provision, however, was made for the punishment of persons not licensed who undertook *to engage in the business.* The Act of 1898 supplies this omission and the acts taken together leave nothing to be inferred or implied."
>
> 35 Wash. Law Rep. 85, Daly *vs.* Macfarland.

It is clear from this language of the Court of Appeals that the purpose of the Act of June 18th, 1898, was to regulate the *business of plumbing.* It points out that there was ample provision for the punishment of "plumbers and house owners and others who neglected or persisted in doing work *contrary to the plumbing regulations,*" but that the absence of express provision for those who held themselves out or accepted employment as plumbers and undertook to engage in that business gave rise to this Act which would otherwise, perhaps, be superfluous.

That such was the real object of the legislation is further illustrated by the language of the Act itself. Section 2 provides as follows:

> "Sec. 2. That in addition to such advisory duties as said Commissioners shall assign them,

> it shall be the duty of said plumbing board to examine all applicants for license as master plumbers or gas fitters, and to report to said Commissioners, who, if satisfied from such report that the applicant is a fit person *to enage in the business of plumbing* or gas fitting, shall issue a license to such person *to engage in such business.*"

By this section the thing to be licensed is the *engaging in the business of plumbing*, etc., and the license referred to in Section 5 as the prerequisite for *engaging in the work of plumbing* is *license as provided in this Act,* namely, license to engage in the business of plumbing and gas fitting. So that the two sections are inseparable in this connection and that they refer to the same subject is reflected in a common meaning of the two phrases, *work* of plumbing being used, no doubt, to include the occupation of one not licensed but authorized to pursue his occupation of plumbing by reason of his being in *the employ of a licensed master plumber.*

> "Business" is the synonym of employment, signifying that which occupies the time, attention and labor of men for the purpose of a livelihood.
>
> 59 Ala. 36, Martin *vs.* State.

> "Business" is a word of large signification and denotes the employment or occupation in which a person is engaged to procure a living.
>
> 2 Allen 395, Goddard *vs.* Chaffee.
> 86 Tex. 153, Hardware Co. *vs.* Manufacturing Co.

Section 5 makes it unlawful *to engage in the work of plumbing.*

Similar phrases have been universally construed favorably to the contention of the defendants in this case and no case has been found in which occasional acts pertaining to a trade or business or occupation have been held sufficient, either by way of averment or proof, to establish and *engaging in* such work or business in violation of such statutes.

17 Ala. 181, Ewbanks *vs.* State, was a case in which an averment in an indictment that defendant *"did keep"* a ten pin alley without license, was held insufficient under a statute prohibiting engaging in the business of keeping a ten pin alley.

The same conclusion is found upon examination to be supported by the following cases:

52 Ala. 19, Weil *vs.* State.
49 N. J. 110, Cary *vs.* Plainfield.
57 Ala. 46, Meritt *vs.* State.
72 Conn. 604, State *vs.* Gallaher.
78 Minn. 118, State *vs.* Finch.
9 Baxter (Tenn.) 610, Ayrnett *vs.* Edmonston.

44 Ala. 417, Johnson *vs.* State: Per Curiam; "The indictment charges that the defendant *'did distil'* vinous or spiritous liquors without license and contrary to law. * * * The offense is engaging in or carrying on a business for which a license is required. The indictment fails to charge and offence."

16 Tex. App. 331, Stamford *vs.* State. In this case defendant was convicted of "Pursuing the occupation of selling intoxicating

> liquor without license: he was a farmer and had made but one sale. On appeal the opinion of the court was: "A single sale would not of itself constitute pursuing or following the occupation. * * * Occupation as used in the statute and commonly understood would signify vocation, calling or trade. *It is engaging in the business* of selling without paying the occupation tax. * * * A person may make occasional sales of liquor without pursuing or following or intending to follow the occupation of selling."

There was no evidence in the case at bar that the work done by the defendants was exclusively plumbing work, and as a matter of common knowledge plumbers frequently, in the course of their occupation, perform work which is common to other mechanics. It is not pretended that the defendants held themselves out as plumbers or accepted employment as such, or in any way attempted to interfere with the water system in the house. As an incident to their business they connected the two tanks by some kind of pipes not shown to be peculiar to plumbers or plumbing work, nor is it claimed that the apparatus was unsatisfactory for its contemplated use.

The apparatus, when connected the one tank with the other, was a composite device to be used as a fixture by the plumbers, or not used if unsatisfactory, and if the connection of the two tanks one with the other the defendants' act would have been no different from that of the plumbers' supply man who assembles and furnishes a bath tub or other appliance, or of the manufacturer of a soda fountain or coffee urn, both of

which by adoption and attachment thereto, become a part of the plumbing system where used. Yet none of these could be said to be engaging in the work or business of plumbing.

2.

In any event if the acts of the defendants are a violation of the statute it is because they *engaged in the work of plumbing,* and this language conveys the idea of continuity, repetition or practice and they were entitled to be so advised by the pleading and to demand proof thereof.

3.

It was error to receive opinion evidence that the work done by the defendants was plumbing work. Section 5 of the act does not define what acts constitute engaging in the work of plumbing any more specifically than the words imply.

> "It is therefore for the courts to determine whether the facts proved in a particular case bring it within the statute, taking these in the sense in which they are commonly understood."
>
> 23 App. D. C. 59, Springer *vs.* D. C.

If the words had no common or well known meaning but the same was to be a matter of opinion the statute would be void for uncertainty.

> 24 App. D. C. 569, Lockwood *vs.* D. C.
> 25 App. D. C. 443, Czarra's Case.

In the case at bar the testimony of the master plumbers, if looked to to shed light, would naturally

impress the technical meaning upon the words used and their statement that the acts were plumbing would effectually decide the sole question to be determined, leaving nothing for the court to do but pronounce judgment.

It is therefore contended that the court below erred and that the judgment should be reversed for the reasons assigned.

Respectfully submitted,

JAMES B. ARCHER, JR.,

JNO. LEWIS SMITH,

Attorneys for Plaintiffs in Error.

Court of Appeals, District of Columbia.

JANUARY TERM, 1908.

No. 19, Special Calendar.

MARION L. GARRISON AND WALTER EDWARDS,
Plaintiffs in Error,

vs.

DISTRICT OF COLUMBIA.

1851

EDWARD H. THOMAS,
FRANCIS H. STEPHENS,
Attorneys for Defendant in Error.

Court of Appeals of the District of Columbia.

JANUARY TERM, 1908.

No. 19, Special Calendar.

MARION L. GARRISON AND WALTER EDWARDS,
Plaintiffs in Error,

vs.

DISTRICT OF COLUMBIA.

STATEMENT.

This case comes into this Court upon a writ of error directed to the Police Court to review a judgment of that Court finding the plaintiffs in error guilty under an information charging them with doing certain plumbing work without having a license therefor.

The evidence discloses that the plaintiffs in error connected together a log-boiler and a heating tank by means of pipes running between them, at the Congress Hotel Building in this city; that the boiler and tank constituted a hot-water apparatus for heating and supplying hot water for domestic purposes; that all the hot water to be used in the hotel would flow through these connecting pipes; that the plaintiffs in error were not licensed plumbers, but steam-fitters; that the boiler and tank were connected on the hotel premises; that the plaintiffs in error did not connect the apparatus to the water-pipes on the premises, but had simply sold it to the hotel, and left that connection to be made by plumbers.

The assistant inspector of plumbing testified that he had

had twenty-seven years experience and that such work had always been regarded as plumbing work.

A master-plumber testified that such work was always regarded as plumbing work. A builder of long experience testified that such work was always left for the plumbers, in building contracts. It was admitted that eight master plumbers of experience, called by the District, would also testify that the work done by the plaintiffs in error was in their opinion, plumbing work. Objection was made to this admission of expert evidence as improper, and the Court was asked to rule, as a matter of law, that the work done by the plaintiffs in error of connecting the boiler and tank was not a violation of the statute; but the Court refused so to rule.

ARGUMENT.

This case comes up as a test case, and is the culmination of a long controversy between the Inspector of Plumbing on one side, and the dealers in heating apparatus on the other. The latter have strongly and persistently claimed the privilege, whenever they have installed heating plants of any kind in a building, to do whatever work was necessary to make the installation complete and perfect. For example, when a hot-water plant is put into a dwelling, they claim the right to place or set the furnace or boiler, also to connect all the pipes with the boiler and with the supply pipe which conducts the water into the premises.

The Act of Congress of June 18, 1898, provides in Section 5 (Plumbing Regulations, p. 6):

> "That it shall be unlawful for any person to engage in the work of plumbing or gas fitting in the District of Columbia unless he is licensed as provided in this Act, or is an employee of a licensed master plumber."

Pursuant to the authority conferred upon them by the Act of Congress of April 23, 1892, (Plumbing Regulations, p.

3), the Commissioners have promulgated plumbing regulations, wherein it is provided, among other things:

> Section 1. "These regulations shall be held to include and govern all work done and materials used (1) in introducing, maintaining, and extending a supply of water through a pipe or pipes in any building, lot, premises, or establishment.

Section 9, (Plumbing Regulations, pp. 15-16):

> "Before any portion of the water supply or drainage system of any building, premises or establishment shall be laid or constructed, there shall be filed by the owner, architect, or builder, plans and specifications therefor, with the Inspector of Plumbing, showing the said *system entire* (including traps, supply, waste and ventilating pipes) from its connection with the public sewer and water main to its terminus inside the building line. The name of the *plumber* who is to perform the work shall be given, and the plans and specifications must be approved in writing by the Inspector of Plumbing before any portion of the work shall be executed." * * *

The questions raised in the Police Court seem to be:

Was the work done, plumbing work; and was the expert evidence admissible upon this point.

The case was tried by a judge of the Police Court, without a jury, and he, therefore, decided both the law and the facts. Under the provisions of Section 8, of the Act of 1898, the maximum fine is one hundred dollars; and under Section 44 of the Code, the plaintiffs in error were entitled to a trial by a jury, had they demanded it. The Court admitted the opinion of experts to enlighten his mind upon the subject, and it is difficult to see how he could have proceeded without it. Plumbing is a science in itself, involving expert knowledge of other sciences, and the law requires an examination as to fitness before permitting one to practice it. The testimony could only have been admitted to assist the Court in deter-

mining a question of fact, and the Court, actng as a jury, was not bound by the testimony.

(Spring Co. v. Edgar, 99 U. S., 645, 657.)
(12 Am. & Eng. Ency., 421.)

Nor will the admission of such testimony be reversed except for manifest error. (99 U. S., 657.)

It is not infrequent that the question whether expert evidence is admissible or not becomes one of very nice discrimination. If, then, any discreton be vested in the trial judge upon such a matter, he should be given the full benefit of it.

> "Cases arise where it is very much a matter of discretion with the trial court whether to receive or exclude the evidence; but the appellate court will not reverse in such a case unless the ruling is manifestly erroneous."

(Spring Co. vs. Edgar, 99 U. S., 658.)

The testimony of experts is admissible to show what is a full cargo for a vessel.

(Ogden vs. Parsons, 23 How., 167.)

The testimony of a gas-fitter is admissible to show that gas-meters are gas fixtures, where there is a contest over a contract to furnish the latter.

(Downs vs. Sprague, 1 Abb. App., Dec., 550.)

In Insurance Co. v. Lathrop, 111 U. S., 620, the court said that the opinion of a non-expert witness was admissible as to the sanity or insanity of a person, where the witness testified as to his own observations, and that such opinion was really the statement of a fact. "The expressed opinion of one who has had adequate opportunities to observe his conduct and appearance is but the statement of a fact; * * * being founded on actual observation, and being consistent with common experience and the ordinary manifestations of the condition of the mind, it is knowledge, so far as the human mind can acquire knowledge, upon such a subject."

In the case at bar, the expert witnesses testified to matters of

fact, things within their personal knowledge, and their testimony was admissible within the rule above cited.

The trial court may have found from the evidence, in the case at bar, as a matter of fact, that the log boiler was a plumbing fixture and that the pipes connected therewith were such since the testimony shows the location of these articles and the purpose for which they are intended. If this be true, the judgment will not be disturbed, for this court has decided that upon the decision of a question of fact, the findings of the lower court will not be reviewed, even where the testimony is not disputed; because the court may not believe the witnesses or may believe they are evading the issue.

Trometer v. D. C., 24 App., 242.

Here the testimony in behalf of the plaintiffs in error is that they sold the heating apparatus to the hotel company. Whether they sold one tank or the boiler or both does not appear. They say the boiler and tank were connected on the premises because it was too large to be moved there if it had been connected in the shop. The fact remains undisputed that the tank and boiler were separately carried into the hotel. By whom this was done, or whether by one or different persons, it is submitted is immaterial. It is not shown that the plaintiffs in error were under any contract to connect the two together; and if they were, it could make no difference, if they were performing work that only a licensed plumber was entitled to do. It was just as important that the connection between the boiler and the tank should be done by experienced and competent persons, as all the hot water for the hotel flowed through these connections, as it was for the connection of the boiler with the water supply pipes. Yet the latter work, the plaintiffs left for the plumbers to do, and the former they adjudged themselves competent to perform. Why the connection of a pipe, used for carrying a supply of hot water, is any more important or any less important in one part of a cellar than another pipe a few feet distant, used for the same

purpose, is difficult to perceive. But this constitutes the whole claim of the plaintiffs in error, with the admission, perhaps tacit, that they are competent to do the one but not the other.

If the work in question be not considered plumbing work, then the question arises would the connection of this apparatus with the water supply pipes be considered such. In the former case, no interior plumbing work of any kind, would be left for the plumbers except the mere connection of the pipe system in a building with the supply pipe. In the latter case, none at all.

A few illustrations will make this statement plain: the vendor of a bath-tub, or of a water closet basin or tank would claim, and be entitled to, the right not only to set or place his tub, basin or tank in position, but also to run all pipes used in connection therewith to any and all parts of the building and to install in connection therewith all necessary and usual valves, traps, vents and all the accessories ordinarily found in such work. Extend this privilege to vendors of steam heating apparatus, hot water apparatus, to vendors of stoves or kitchen ranges with hot water backs or with attachments for hot-water tanks, and to vendors of gas ranges, with hot-water backs, or attachments for hot-water tanks, and to vendors of kitchen sinks and similar appliances, and it will be seen that the plumbers' occupation will be gone. Give them the right, in addition, to connect their apparatus with the supply pipes, and there is nothing left for the plumbers to do within the interior of a building. And yet, unquestionably, this is the most important part of a plumber's work. The work done outside of a building, while not to be regarded in any light as unimportant, is not to be compared in importance with that done inside; because it is in the latter work that danger is most likely to arise, and usually does arise, from careless and incompetent workmanship in the shape of leaky pipes, loose joints, etc., from which noxious and dangerous odors and gases escape into a building to poison its inmates. A leaky

water pipe, for example, may weaken the foundation of a building and make the building unsafe.

It is important to observe in this connection, and this is vital to the case, that it is not the extent of the work done or the number of feet of pipes installed that is important, but the character of the work. If the pipes installed carry any part of the sewage or water supply of a building, then it is submitted, the work is one that should be properly done by a plumber, whose fitness and competency have previously been determined by a proper examination for that purpose, and whose responsibility is also fixed by the fact that the law requires him to give bond.

Respectfully submitted,

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